REMARKS/ARGUMENTS

Claims 1-5 and 12 are pending. Claims 6-11, being previously withdrawn, are now canceled without prejudice. Claims 1, 2, and 3 are amended.

The amendment of claim 1 now recites the instrument console (see canceled language of claim 3) and the surgical pack (see canceled language from claim 2). Claim 1 further recites the concept of containing the aspiration tube within confines of the sheath. Such subject matter is evident from Fig. 1 as well as from paragraphs [0015], [0019] and [0020] of the application. The first clause of claim 1 is rephrased in a more concise manner.

Claims 1-5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Strukel (US 5,741,226). The rejection is respectfully traversed.

Independent claim 1 recites the location of the sheath, namely, that the sterile, tubular sheath be arranged to contain the aspiration tube within confines of the sterile, tubular sheath between the hollow extension tube and the instrument console. As a consequence, the sheath serves as a sterilized barrier against exposure of the aspiration tube to contamination.

Further, independent claim 1 recites that the aspiration tube project from the instrument console. As can be appreciated, such a location is necessarily upstream of the surgical handpiece and its tip.

As a result, the aspiration tube by the instrument console is protected against contamination from exposure externally during surgical operations and thus may be reused upon removal and discard of the extension tube and sheath. This avoids downtime between surgical procedures since the surgical pack is ready to be used again without the need for further sterilization or cleansing procedures (see

paragraphs [0004] and [0005]). All that is needed is a replacement extension tube with sheath so a new phacoemulsification procedure can commence.

Turning to Strukel, the collapsible sleeve 88 (Figs. 51 and 52 of Strukel) and the baffle 19 (Figs. 3A - 3G) or the accordion section 90 (Figs. 51 and 52) are downstream of the instrument console in the vicinity of the surgical handpiece itself. Such a placement contrasts with the recitation of pending claim 1 of the present application.

That is, claim 1 recites that the aspiration tube project from the instrument console and that the distal end of the aspiration tube be attached to a hollow extension tube.

In contrast, Figs. 4 and 5 of Strukel show the aspiration tube to be of a continuous, unbroken construction as it extends through the surgical handpiece 11 to a pump within a phacoemulsifier control console. Its distal end is used to aspirate tissue; there is no extension tube attached to its distal end. Further, there is no sterile, tubular sheath in Figs. 4 or 5 of Strukel.

To make up for this lack of a sheath in Figs. 4 and 5 of Strukel, the Office Action turns to Figs. 51 and 52 of Strukel. While they do show a compressible and expandable accordion section 90 that contains a portion of the aspiration tube 16, its placement is at the surgical handpiece itself as opposed to upstream where contamination is a problem for reuse of the surgical pack and aspiration tube.

Further, Strukel still lacks a hollow extension tube to which the distal end of the aspiration tube is to be attached, claim 3 of Strukel notwithstanding.

Indeed, claim 3 of Strukel, which depends on claim 2, provides:

> *2. The surgical instrument of claim 1, further comprising means for directing the infused liquid.*

> *3. The surgical instrument of claim 2, wherein said directing means comprises at least one of at least one barrier, annular ramp, step, angled surface, bar, baffle, wedge and extension disposed on one of an internal and an external surface of said sleeve.*

Thus, claim 3 of Strukel calls for the construction of that responsible for directing infused liquid, as opposed to that responsible for aspirating fluid.

It is submitted that even if claim 3 of Strukel revealed a hollow extension tube, such would be part of the infusion fluid line and thus have no bearing on attachment to a distal end of an aspiration line. As such, a skilled artisan would lack motivation to modify Strukel's aspiration line by that of claim 3 of Strukel.

When claim 3 of Strukel refers to baffles, it is referring to the baffles 19 of Fig. 3 or the accordion section 90 of Figs. 51 and 52. The purpose for these baffles 19 or accordion section 90 is not to prevent contamination of the aspiration line, but rather to assist in directing infusion flow and, in the case of the accordion section 90, to seal with the incision.

As a consequence, the baffles 19 and the accordion section 90 necessarily need to be in the vicinity of the surgical handpiece tip as opposed to further upstream near an instrument console or surgical pack. Otherwise, their baffling effect would subside before the infusion flow emerges from the sleeve 88. To place them elsewhere would frustrate the teaching in Strukel that they be used to direct the infusion flow, because their effect on the infusion flow as the flow emerges from the surgical handpiece tip will diminish if not be eliminated should they be arranged further upstream.

As col. 10 lines 62-64 of Strukel mentions, the purpose of the accordion section 90 is to seal the incision in the cornea. In contrast, the sterile, tubular sheath of

independent claim 1 has nothing to do with sealing the cornea. Indeed, it confines the aspiration tube between the instrument console and the hollow extension tube and thus prevents contamination of the confined aspiration tube so as to enable the aspiration tube to be reused without the need for sterilization procedures.

Strukel's baffle or accordion section is not suited to prevent contamination of the aspiration tube in the vicinity of an instrument console. Since the tip of the aspiration needle of the surgical handpiece in Strukel is to enter eye tissue anyway, the presence of the baffle 19 or accordion section 90 of Strukel really will not enable the reuse of the aspiration needle without the need for sterilization.

Fig. 4 of Strukel shows that the aspiration conduit extends from an aspiration source to enter the surgical handpiece. The aspiration conduit passes through the surgical handpiece to be shrouded in a longitudinal direction by the irrigation-sleeve until the aspiration conduit (needle) emerges from the surgical handpiece.

During a phacoemulsification operation, any of the exposed regions of the aspiration conduit may become contaminated. As a consequence, the entire aspiration conduit including any surgical pack will need to be replaced before a new surgical operation can commence to avoid the risk of contamination of the next patient.

In contrast, the present invention, as reflected by independent claim 1, avoids such a result by providing for a tubular sheath and hollow extension tube from which the sheath extends to contain the aspiration tube (between the instrument console and the hollow extension tube). Strukel clearly lacks any equivalent to a hollow extension tube attached to a distal end of an aspiration tube.

Withdrawal of the rejection is earnestly solicited.

Respectfully submitted,

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